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**CITY OF DANA POINT  
PLANNING COMMISSION  
REGULAR MEETING MINUTES**

May 18, 2005  
7:05-8:11 p.m.

City Hall Offices  
Council Chamber (#210)  
33282 Golden Lantern  
Dana Point, CA 92629

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**CALL TO ORDER** – Chairwoman O'Connor called the meeting to order.

**PLEDGE OF ALLEGIANCE** – Vice-Chairman Schoeffel led the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Commissioner Norman Denton, Chairwoman April O'Connor, Commissioner Greg Powers, Vice-Chairman J. Scott Schoeffel, and Commissioner Steven Weinberg

Staff Present: Kyle Butterwick (Director), Todd Litfin (Assistant City Attorney), John Tilton (City Architect/Planning Manager), Robert Kain (Permit Coordinator), Kurth Nelson (Project Planner), and Bobbi Ogan (Planning Secretary)

**A. APPROVAL OF MINUTES**

**ITEM 1:** Minutes of the regular Planning Commission Meeting of May 4, 2005.

**ACTION:** Motion made (Denton) and seconded (Weinberg) to approve the Minutes of the regular Planning Commission Meeting of May 4, 2005. Motion carried 5-0. (AYES: Denton, O'Connor, Powers, Schoeffel, Weinberg NOES: None ABSENT: None ABSTAIN: None)

**B. PUBLIC COMMENTS**

There were no Public Comments.

**C. CONSENT CALENDAR**

There were no items on the Consent Calendar.

**D. PUBLIC HEARINGS**

**ITEM 2: Major Antenna Use Permit AUP04-02 and Coastal Development Permit CDP05-11 to allow for a cellular antenna to be installed within a parking lot light standard and a second cellular antenna and the associated support equipment to be installed within a new second story at an existing maintenance storage building.**

Applicant: Nextel Communications  
Owner: Theresa Cagney Morrison  
Location: 32942 Pacific Coast Highway

Request: An Antenna Use Permit (Major) and a Coastal Development Permit to allow for two wireless telecommunication antenna arrays and support equipment to be installed within an existing light fixture and a maintenance storage building located within the parking lot at the rear of Monarch Bay Plaza.

Environmental: The proposed project qualifies as a Class 1 (Section 15301) pursuant to the applicable provisions of the California Environmental Quality Act (CEQA) in that the project involves the minor alteration of an existing structure.

Recommendation: That the Planning Commission adopt the attached draft Resolution approving Antenna Use Permit AUP04-02 (Major) and Coastal Development Permit CDP05-11.

**Robert Kain** (Permit Coordinator) reviewed the staff report.

**There being no requests to speak on this item, Chairwoman O'Connor opened and closed the Public Hearing.**

**ACTION: Motion made (Powers) and seconded (Schoeffel) to adopt Resolution 05-05-18-20 approving Antenna Use Permit AUP04-02 (Major) and Coastal Development Permit CDP05-11. Motion carried 5-0. (AYES: Denton, O'Connor, Powers, Schoeffel, Weinberg NOES: None ABSENT: None ABSTAIN: None)**

**ITEM 3: Variance V04-03 to allow a new 2,930 square foot, two-story single-family dwelling with an attached 412 square foot garage, together measuring 29.25 feet in height, instead of the maximum allowable height of 26 feet and a Minor Site Development Permit SDP05-21M for retaining walls as high as 12 feet on a 4,507 square foot lot in the Residential Single Family (RSF 22) zoning district at 25205 Manzanita Drive. (Continued from the regular Planning Commission meeting of April 20, 2005)**

Applicant/  
Owners: David Tabatabaeepour  
Location: 25205 Manzanita

Request: A Variance to allow a new 2,930 square foot, two-story single-family dwelling and attached 412 square foot garage, together measuring 29.25 feet in height, instead of the maximum allowable height of 26 feet and a Minor Site Development Permit for retaining walls as high as 12 feet on a 4,507 square foot lot in the Residential Single Family (RSF 22) Zoning District.

Environmental: The proposed project qualifies as a Class 3 (Section 15303) pursuant to the applicable provisions of the California Environmental Quality Act (CEQA) in that the project involves the construction of single-family residence and associated retaining walls.

Recommendation: That the Planning Commission adopt the attached draft Resolution denying Variance V04-03 and Site Development Permit SDP05-21M.

**Kyle Butterwick** (Director) stated that he had received an inquiry about the recent City Council direction to require story poles for any projects that require a Variance from the maximum allowable height provisions of the City's Ordinance. He added that the directive from the City Council occurred subsequent to the first public hearing on this item. He stated that the City has not required this applicant to construct story poles for this particular item since this was an active, pending application. He added that the application of that direction will occur for all future applications and projects filed with the City. He stated that the Planning Commission maintains the prerogative of seeking additional information to assist in the decision making process and that could include a request to construct story poles.

**Kurth Nelson** (Project Planner) reviewed the staff report.

#### **Chairwoman O'Connor opened the Public Hearing.**

**David Tabatabaepour** (Anaheim Hills – Applicant) stated that they had made revisions to the original plan which reduced the height by four (4) feet and that the height Variance would be for three (3) feet, 3.25 inches. He added that to convey the uniqueness of this property and slope that a higher structure could be built without the need for a Variance.

**Hadi Tabatabaepour** (Anaheim Hills) stated that they had gone back to the drawing board and were able to reduce the height of the home by four feet. He added that he would appreciate the support and approval of this project.

**Tom Harrold** (Dana Point) stated that he was concerned about construction equipment blocking the road and how his property was to be protected during the excavation needed for the retaining wall.

**John Carroll** (Dana Point) stated that he would like to see story poles on the property so that the neighbors could have an idea of what the project would look

like. He added that he likes the design of the proposed home and felt that it would be a great addition to the neighborhood.

**George Behman** (Architect) stated that the Code would allow the property owner to build a two-story home on the flat area of the property, but the views of the neighbors would be obscured and that was the reason for the need of a Variance. He added that this was a small encroachment into the envelope and height restrictions for this property. He asked for approval of the project.

**Chairwoman O'Connor closed the Public Hearing.**

**Commissioner Denton** stated that in this case that the story poles might be the way to go. He felt that the applicant had made a good intent to comply but that there are ways to build a home without a Variance even though it might not be the floor plan that the applicant wants.

**Vice-Chairman Schoeffel** stated that by the applicant's own admission and the concurrence of City staff that the zoning was not prohibiting. He added that as a matter of law that the Commission was without jurisdiction to grant the Variance.

**Commissioner Weinberg** stated that the property owner has the right to build a home that would be higher but would impact the neighbors around him. He added that he wanted to see story poles put up on the property so everyone could see what was being proposed. He stated that he would support the Variance.

**Commissioner Powers** stated that the Commission needed to look at what was best for the community. He added that the hardship was with the slope, the conditions of how this property has to be built, and the way it fits with its neighbors. He felt that the project does meet the hardship requirement, that it is a good project for the community, and that the Planning Commission should approve it.

**Chairwoman O'Connor** stated that there were two (2) things that have convinced her to deny the Variance, one that she didn't see a hardship, and two, that the applicant had admitted that a structure could be built without a Variance.

**Chairwoman O'Connor re-opened the Public Hearing.**

**David Tabatabaepour** *replied that it was not accurate to characterize what he said as any kind of admission that the project could be built without a Variance and not constitute a hardship.*

**Chairwoman O'Connor closed the Public Hearing.**

**Commissioner Weinberg** felt that the proposed project fits with the neighborhood and that it was reasonable development. He stated that the hardship was on the community at large.

**Commissioner Powers** stated that the Commission needed to do what was right and that the hardship was on the community.

**Todd Litfin** (Assistant City Attorney) stated that hardship issue was an analysis of whether physical characteristics of the property create a hardship for the property owner in relation to building something on the property within the context of the current Zoning Code. He added that a hardship on the community is not something within the legal context of what a Variance is meant to consist of. He stated that no one can give guidance on what a hardship is and that it is something that is looked at on a case-by-case basis to make that determination by the analysis of all of the facts relevant to that situation.

**John Tilton** (City Architect/Planning Manager) stated that in working with the applicant and staff's analysis, that it appears to be that if a house was designed without a Variance then rather than a 3,000 square foot home it would be in the vicinity of slightly more than 2,000 square feet. He added that it was doubtful that a house could be built that would be much more than 2,000 square feet without a Variance.

**ACTION:** Motion made (Denton) and seconded (Schoeffel) to adopt Resolution 05-05-18-21 denying Variance V04-03 and Site Development Permit SDP05-21M. Motion carried 3-2. (AYES: Denton, O'Connor, Schoeffel NOES: Powers, Weinberg ABSENT: None ABSTAIN: None)

**E. PUBLIC MEETINGS**

There were no Public Meetings.

**F. OLD BUSINESS**

There was no Old Business.

**G. NEW BUSINESS**

There was no New Business.

**H. STAFF REPORTS**

**Kyle Butterwick** (Director) reminded the Commission about the upcoming joint meeting on May 25<sup>th</sup> at the Marriott.

He briefed the Commission about the harbor revitalization project. He stated that the draft EIR was expected in late summer and that the City would be sponsoring

several workshops in Dana Point before the document was reviewed by the Board of Supervisors.

He stated that the Headlands had finished the clear and grub operations and that the City was close to issuing a grading permit.

**Todd Litfin** (Assistant City Attorney) reported that a judge had ruled that the City does have a valid General Plan. He stated that Surfrider had served a preliminary injunction regarding the Headlands which is scheduled to be heard by Judge Brenner in Orange County Superior Court, Department C-20 on June 15<sup>th</sup>.

**I. COMMISSIONER COMMENTS**

**Commissioner Weinberg** stated that the Planning Commission needs help from the City Council on fixing the height issues.

**J. ADJOURNMENT**

**Chairwoman O'Connor** announced that the *next special* meeting of the Planning Commission would be held on Wednesday, May 25, 2005, beginning at 6:00 p.m. (or as soon thereafter) at the Laguna Cliffs Marriott located at 25135 Park Lantern, Dana Point, California.

**The meeting adjourned at 8:11 p.m.**

*/s/ J. Scott Schoeffel, Vice-Chairman for*

April O'Connor, Chairwoman  
Planning Commission